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ARIZONA SUPREME COURT

In the matter of:)	
)	
PETITION TO AMEND RULES 7, 8, 10,)	Supreme Court No. R- _____
10.1, 10.2, 15.1, 15.2, 18, 19, 22, 26, 26.1, 27.1,)		(Expedited Adoption Requested)
28, 29, 29.2, 30, 30.1, 30.2, 30.3, 30.4, 33, 38,)		
<i>Rules of Probate Procedure and</i>)	
<i>Rule 31, Rules of the Supreme Court</i>)	

I. Background and Purpose of the Proposed New Rules.

On April 30, 2010, Chief Justice Rebecca White Berch issued Administrative Order No. 2010-52, establishing the Committee on Improving Judicial Oversight and Processing of Probate Matters. Pursuant to the Administrative Order, the Committee was charged with the responsibility to consider and make recommendations regarding: (1) ways to streamline the process when an incapacitated or vulnerable child reaches the age of majority and is in need of a guardian and/or conservator; (2) effective court oversight and monitoring of guardianships, conservatorships, and decedent estate cases; (3) statewide fee guidelines for professional fiduciaries and attorneys paid from a ward's or protected person's estate; and (4) the process used by courts to review and award fiduciary and attorney fees, particularly when disputed. The Committee was directed to file a final report to the Arizona Judicial Council by June 2011.

Many of the issues under consideration by the Committee were introduced as legislative bills during the First Regular Session of the Fiftieth Legislature (2011). Ultimately, the Legislature passed Senate Bill 1081, Chapter 225 and Senate Bill 1499, Chapter 354. The amended statutes impact the *Arizona Rules of Probate Procedure*.

Senate Bill 1081 was enacted with a general effective date of July 20, 2011. This legislation addresses the transition from a minor to adult guardianship and impacts Rule 5, *Rules of Probate Procedure*. On June 2, 2011, the Court adopted amendments to Rule 5, effective July 20, 2011, in conformity with the effective date of the statutory changes. (No. R-11-0020) Further, the Court directed a post-adoption comment period for this Rule Petition, through November 1, 2011.

The Committee submitted its Final Report to the Arizona Judicial Council for review at the Council's meeting on June 20, 2011. The Final Report contains proposed changes to the *Rules of Probate Procedure* and *Rules of the Supreme Court*. The Final Report is available on the judicial department's website at: www.azcourts.gov/pcc. Some of the proposed rule changes are needed to implement the statutory changes enacted by Senate Bill 1499, effective January 1, 2012. In addition, the Final Report includes other recommended rule changes, separate from the statutory amendments.

At the Arizona Judicial Council meeting on June 20, 2011, the Council had a preliminary discussion regarding the Final Report and authorized the filing of a Rule Petition with the proposed rule amendments contained in Appendix N of the Final Report. (Note: the proposed changes to Rule 5, *Rules of Probate Procedure*, are not included in this Rule Petition; but rather, are contained in Rule Petition R-11-0020 as referenced above.) The Council will continue the review of the Final Report and vote on the recommendations at its

next meeting on October 28, 2011. Included in this review will be an examination of those provisions where the Final Report provides different models or options. For example, the recommendation for post-appointment visitation of protected persons and wards, with proposed amendments to Rule 30, provides “Triage Model A” and “Triage Model B.” Further, a number of the recommendations, including the provision for post-appointment visitation, have significant implementation issues, for example, funding, statutory amendments, etc. that need to be addressed when considering the rule amendments.

II. Contents of the Proposed Rule Amendments and New Rules

The proposed new rules address the issues of Minor to Adult Guardianship, Judicial Oversight of Probate Cases and Attorney and Fiduciary Fees and Fee Disputes. (Appendix A contains the complete text of the proposed amendments to the *Rules of Probate Procedure*. Appendix B contains the text of the proposed amendments to the *Rules of the Supreme Court*.) Appendix C contains proposed changes to the Arizona Code of Judicial Administration (“ACJA”) § 7-202: Fiduciaries. The proposed changes to ACJA § 7-202 accompany the proposed changes to Rule 31, *Rules of the Supreme Court*; the ACJA changes are provided for reference purposes when reviewing the suggested amendments to Rule 31.

Many of the proposed new rules address existing forms or propose new probate forms. For example, Rule 38, *Rules of Probate Procedure*, currently contains Forms 1 through 4. This Rule Petition proposes additions to Rule 38 to append new Forms 5 through 10. The proposed changes to the existing forms and the new forms are contained in Appendix D of this Petition. The schedules that accompany the new Forms 5 through 10

are contained in Appendix E. The proposed rule changes also reference utilization of a Risk Assessment Form; this is included in Appendix D.

To allow for flexible and effective implementation of the rule changes and the corresponding forms, it is suggested the Court adopt the forms and schedules as an amendment to the Arizona Code of Judicial Administration, rather than incorporating the forms and schedules in the *Rules of Probate Procedure*. Amendments to the Arizona Code of Judicial Administration can be accomplished in a shorter time period than amendments to court rules; this will allow for flexibility and adaptation of the forms and schedules as they are being implemented. Utilizing the Arizona Code of Judicial Administration process will also ensure the forms and schedules are published in the Arizona Rules of Court publications with the Probate Rules for easy reference by judges, attorneys and fiduciaries.

The proposed rule amendments also reference Statewide Fee Guidelines for attorneys and fiduciaries. The proposed Guidelines are contained in Appendix F, for reference purposes when reviewing the Rule Petition. As with the proposed forms, it is recommended the Court adopt these Guidelines through amendments to the Arizona Code of Judicial Administration.

III. Pre-Petition Distribution and Comment

The Committee held eighteen public meetings as a full Committee, from May 2010 to June 2011. In addition, the Committee formed three workgroups; these workgroups met numerous times over the thirteen month period. The Committee received public comment at the meetings of the full Committee and the workgroups and through written comments. Approximately two hundred written comments were received; these written comments were

posted on the judicial department's website. The Petitioner was not able to obtain comments in addition to that described above due to the need to file the Committee's Final Report by June 2011 and the time frame to file this Rule Petition to allow for implementation of the legislative enactments on January 1, 2012.

IV. Request for Modified Comment Period

Due to the complexity of the issues involved in the Committee's Final Report and the adoption of the proposed rule amendments, the Petitioner respectfully requests the Court modify the usual comment schedule as follows:

September 22	Initial comments to the petition due
September 30	Petitioner may modify the rule petition by filing an amended petition, as necessary
November 1	Second round of comments to any amended petition due
November 11	Petitioner's reply to comments due

This proposed schedule will then allow the Court to address the petition, comments and replies in December 2011 for an effective date of January 1, 2012.

RESPECTFULLY SUBMITTED this _____ day of _____, 2011.

Lorraine Smith
On Behalf of the Arizona Judicial Council